

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1759 of 1995

To

FIRST APPEAL 1772 of 1995

With

SPECIAL CIVIL APPLICATION NO. 4999 OF 1995

To

SPECIAL CIVIL APPLICATION No 5046 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ORIENTAL INSURANCE CO LTD

Versus

HARISINH A RAJPUT

Appearance:

Mr. Arun H. Mehta, Ld. Counsel For Insurance Company in all matters.

Mr. H.M. Parikh, learned counsel for original claimants in all matters.

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE S.D.DAVE

Date of decision: 12/09/96

COMMON ORAL JUDGEMENT

Per: S.D. Dave, J:-

Present orders shall govern the disposal of this group of matters, which would include 14 First Appeals and 48 Special Civil Applications. We may indicate that, the Special Civil Applications were required to be filed because the award therein were below a particular amount.

These Appeals and the Special Civil Applications arise out of the common award made by the MAC Tribunal (Auxiliary), District Kheda, at Nadiad, in a group of 62 M A C Petitions filed under Section 110-A of M.V. Act, 1939. The facts which do not appear to be in dispute are that, there was a motor vehicular accident which had occurred on August 13, 1985 at about 3.15 p.m. near Village Parvata, situated within the Kheda district of the State. The persons travelling by the bus, which is popularly known as "Luxury Bus" registered as G T G 3166 was involved in the accident. Claim petitions came to be filed by the heirs & legal representatives of the deceased and the injured persons. The principal contention coming from the appellant/petitioner in these matters, namely the insurer - The Oriental Insurance Company Ltd., in brief was that, they would not be liable to indemnify the owner of the vehicle for the simple reason that, according to the permit issued by the R T O, only 51 passengers could be carried in the bus, but as a matter of fact, at the relevant time 62 passengers were travelling in the bus. The second contention raised by the insurer was that the policy of insurance was showing a limited liability in sum of Rs.30,000-00 only and that, therefore, the total liability of the Insurance Company could not exceed the above said amount. The said contentions which came to be raised by the Insurance Company have not found favour with the Tribunal. Ultimately the awards have been given and the Insurance Company has been made liable to indemnify all the awards. This decision is under challenge in the present appeals and the Special civil applications.

The first contention being raised by learned counsel for the appellant/petitioner is that, there was a breach of condition of the permit issued by the R T O, and therefore the Insurance Company could not have been made liable to indemnify the insured. This contention coming from the Insurance Company cannot be accepted,

regard being had to the Supreme Court pronouncement in case of B.V. Nagaraju Vs. M/s. Oriental Insurance Co.Ltd, Divisional Office, Hassan, reported in J.T. 1996 (6) S.C. pg. 32. It was a case of a goods carrier found to be carrying the goods which would exceed the permissible limit under the permission. It was sought to be contended by the Insurance Company that, as there was a breach of the permit, the Insurance Company was required to be exonerated from the liability. This contention has not been accepted by the Supreme Court, by saying that, the misuse of the vehicle though irregular was not so fundamental in nature so as to put an end to the contract. It has been held that the exclusion term of the insurance policy must be read down so as to serve the main purpose of the policy, that is indemnifying the damage caused to the vehicle. It was upon this reasoning adopted by the Supreme Court that the appeal came to be allowed.

This decision renders a clear answer to the contention being raised by the Insurance Company. It cannot be disputed that the permit could be for carrying the passengers numbering 51 only and that, as a matter of fact, at the time of the accident the bus was found to be carrying 62 passengers. This can be said to be a breach of the term of the condition of the permit. But this fact would not take out the fundamental liability on the part of the insurer to indemnify the owner of the vehicle. We must therefore say, placing reliance upon the Supreme Court decision in case of B.V. Nagaraju (supra) that the first contention requires a rejection.

The second contention coming from learned counsel for the appellant/petitioner is that, the Tribunal was not in order in saying that the duplicate of the policy which came to be presented before the Court by the Officer-Cum-Witness of the Insurance Company could not have been taken into consideration because the Insurance Company had not given a prior notice to the insured to produce the original insurance policy. This contention should not detain us much because even if the copy of the insurance policy produced by the Insurance Company is accepted as the evidence and is taken into consideration, then also, it could not be urged successfully by the Insurance Company that the total liability would be in sum of Rs.30,000-00. It is well settled that this liability is not qua the accident but qua the injured or the deceased, as the case may be. It should be appreciated that in no case the award exceeds the above said limit of Rs.30,000-00. Naturally therefore the second contention also could not be pressed in service

sucessfully.

The result therefore is that, both, the Appeals and the Special Civil Applications require to be dismissed. They are hereby accordingly dismissed. The notice in Special Civil Applications shall stand discharged. The interim relief granted earlier in the Special Civil Applications as well as in Appeals shall stand vacated.

There shall be no order as to cost in respect of First Appeals and Special Civil Applications, which have been disposed of under the present orders.
